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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JAMES E. DUNSTAN
ADMITTED IN VA AND DC

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October 13, 1998

Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

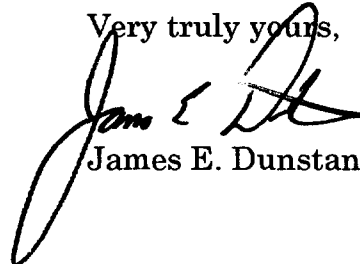
Re: CS Docket No. 98-120
Comments of Corporation for General Trade, Inc.

Dear Ms. Salas:

Enclosed herewith, on behalf of Corporation for General Trade, Inc., are an original and four (4) copies of the **COMMENTS OF CORPORATION FOR GENERAL TRADE, INC.** in response to the Notice of Proposed Rulemaking, FCC 98-153, in the above referenced proceeding. Additionally, a copy has been delivered to each of the Commissioner's offices.

Should there be any questions concerning this matter, please communicate with the undersigned.

Very truly yours,



James E. Dunstan

JED/jmm

Enclosure

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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OCT 13 1998

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Carriage of the Transmissions)	CS Docket No. 98-120
of Digital Television Broadcast Stations)	
)	
Amendments to Part 76)	
of the Commission's Rules)	
To: The Commission		

**COMMENTS OF
CORPORATION FOR GENERAL TRADE, INC.**

Respectfully Submitted,

**CORPORATION FOR GENERAL
TRADE, INC.**

James E. Dunstan
Its Attorney

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October 13, 1998

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SUMMARY

Corporation for General Trade, Inc. ("CGT"), is the licensee of WKJG, Channel 33, Fort Wayne, Indiana, which signed on the air November 21, 1953. WKJG was there for the transition from all black and white to color, and now stands ready for the next transition, to digital television (DTV).

The present NPRM marks the final, and probably most significant, step in the transition from analog to digital television – carriage of DTV signals on cable systems. CGT position is quite simple – the last decade of work by the FCC will go for nothing unless DTV signals are carried on cable systems. If DTV signals are not carried on cable systems, DTV will fail, because viewers, and especially "early adopters" will have little incentive to spend the money on first-generation DTV receivers if what they can receive is something less than all the DTV signals in the market, either in terms of money, or in terms of signal content or signal quality.

CGT therefore urges the Commission to adopt near-term must carry rules for DTV up to one-third of each cable system's channel capacity, consistent with the 1992 Cable Act. CGT also urges the Commission to adopt rules that require that cable systems deliver to subscribers the DTV signal in the format in which it was broadcast, and deliver all of the signal, including data related to that signal. Only that way will viewers have a chance to enjoy the true benefits of digital television.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Carriage of the Transmissions)	CS Docket No. 98-120
of Digital Television Broadcast Stations)	
)	
Amendments to Part 76)	
of the Commission's Rules)	

To: The Commission

**COMMENTS OF
CORPORATION FOR GENERAL TRADE, INC.**

Corporation for General Trade, Inc. ("CGT"), by its attorneys, hereby files these Comments in response to the Notice Of Proposed Rule Making ("NPRM"), FCC 98-153, in the above-referenced proceeding. In support of its Comments, CGT submits:

I. INTRODUCTION

The present NPRM marks the final, and probably most significant, step in the transition from analog to digital television. Now that that issues of channel assignment, technical specification, and timetables have been resolved, the Commission is getting to the last issue of critical importance – carriage of DTV signals on cable systems. As further detailed below, CGT position is quite simple – the last decade of work by the FCC will go for nothing unless DTV signals are carried on cable systems. It is as simple as that. If DTV signals are not carried on cable systems, DTV will fail, because viewers, and especially "early adopters"

will have little incentive to spend the money on first-generation DTV receivers if what they can receive is something less than all the DTV signals in the market, either in terms of money, or in terms of signal content or signal quality. These are the major issues on which CGT will focus in these Comments.

CGT is the licensee of WKJG, Channel 33, Fort Wayne, Indiana, which signed on the air November 21, 1953. WKJG was there for the transition from all black and white to color. As an NBC affiliate, it transitioned to color as NBC began providing color program to its affiliates. WKJG stands ready for the next transition, to digital.

II. MUST CARRY IS A CRITICAL COMPONENT OF DTV IMPLEMENTATION

The Commission has concluded, for better or for worse, that it is time to usher in a new regime of television transmission that will radically alter the way viewers receive and watch television. Through the more than half-dozen Reports and Orders in the DTV proceeding, the Commission has charted a course of no return for the television industry.¹ Stations are rapidly undertaking that transition in good faith; faith that there will be viewers out there willing to purchase the new

¹ The switch over to DTV is very different than the switch from black and white to color operations. The NTSC standard was specifically adopted to be "backward compatible" so that black and white television receivers would still be able to receive a color transmission, albeit in black and white. Now however, the transition from analog to digital transmission modes will require all parties involved to invest in new equipment; millions of dollars on the station side, and thousands of dollars on the part of viewers who wish to enjoy the full features DTV will offer, including the coveted high definition television ("HDTV").

equipment necessary to enjoy the full benefits of DTV, and faith that viewers will be able to receive those signals, if both stations and viewers invest the money in the new technology.

There is still one critical piece of the puzzle left, however, and a piece, that if left out, will leave the new regime stillborn. For if cable systems, which provide television signals to nearly two-thirds of all television households, do not carry DTV signals, and do not carry them in their proper formats, then DTV will go the way of AM stereo and Betamax VCRs – mere curiosities and footnotes in history. But unlike those technologies, the FCC has already committed to burning the bridges of analog television, such that if DTV does not succeed, society may have to do without over-the-air television.

A. The Burdens Imposed By DTV Must Be Shared By Cable

The Commission's decision to usher in digital television has placed burdens on all components of the television market. Stations are compelled to spend millions on the conversion, not knowing exactly where its new signal on a new channel will reach, or who, if any, of its viewers will be able to see the new signal. Millions more will have to be invested over the next ten years to convert all aspects of a station to the new world of DTV. Cameras have to be purchased, news sets have to be redesigned to make use of the 16-9 format view, and equipment deployed

capable of shifting seamlessly between the various formats which will come into the station.

Subscribers will be forced to invest many thousands in new sets, or at least set-top boxes to even view the signal. To fully enjoy the potential of DTV, subscribers will need to purchase larger sets than they have in the past, costing much more than they are currently used to paying for television sets.

Between these two groups, already forced to sacrifice, stands the bottleneck of cable television, and their cries that it is unfair that *they* should be made to sacrifice by carrying these DTV signals. Somehow, they believe that they should be exempt from any burdens imposed by this fundamental shift in the way television is delivered to Americans. The cable industry cannot opt out of this process any more than can television stations unsure if DTV will be a financial disaster, or consumers, unsure whether spending the extra money now is worth it. Unless all three "legs" of the DTV stool stand firm, the entire regime will topple.

B. Retransmission Consent Will Not Solve the Bottleneck Problem

The Commission asks the question at paragraphs 32-38 of the NPRM whether the retransmission consent provisions of the 1992 Cable Act might not work sufficiently to allow television stations to make carriage of their DTV signal a *quid pro quo* of continued carriage of a

station's analog signal. Putting aside the fact that the Commission would have to change its current three-year cycle to allow stations to negotiate now for such rights, the fact is that outside of the largest markets and the most dominant stations, there are few stations with enough power to force cable systems into agreeing to what is effectively a "second channel" deal.

While the Commission states that some 80 percent of commercial broadcasters elected retransmission, it does not state how many of those were able to negotiate for something as valuable as a full second channel on a cable system. CGT's experience has been quite different. Yes, WKJG has a retransmission deal, and thus probably is counted among that 80 percent. Yet it has but a single retransmission deal with one of the cable operators in the market. That deal was an eleventh-hour compromise in which all that WKJG got was the promise of a direct fiber link to the system headend, and link that has never actually materialized. That retransmission deal, in terms of value given up by the cable system, is a far cry from the type that would be required to force a cable system to carry WKJG's DTV signal in exchange for continued carriage of its analog signal.

In sum, CGT knows that it will be extremely difficult to obtain carriage of both its analog and digital signal if the only tool in its belt is retransmission consent. The threat that it will withhold its analog signal is an empty threat, and there will be no consumer pressure at the

beginning to provide any leverage for a station to demand carriage of its DTV signal. CGT believes that this will also be the case for the vast majority of stations in the country. If all the Commission can offer is retransmission consent, then DTV is doomed to fail.

C. Must Carry Should Be Granted and Enforced To The Full Extent Possible Consistent With the 1992 Act

CGT takes this opportunity to comment on the specific approaches put forward by the Commission at paragraphs 40-51 of the NPRM. These approaches range from carriage consistent with the 1992 Act, all the way to outright rejection of the Congressional mandate contained in the 1992 Act. Only through immediate, and full carriage of DTV can the Commission ever hope to make DTV viable. **CGT urges the Commission to adopt the "Immediate Carriage Proposal" outlined in paragraph 41 of the NPRM.**

The Commission is on very solid ground in adopting this first proposal. The 992 Act is clear that Congress intended that when the DTV was implemented, that those signals would come under Section 614 of the Act.² To retreat from that now would violate the spirit of the 1992 Act, fully backed by the Supreme Court, that there is a substantial government interest in ensuring that free over-the-air television continues to exist. At no time in the 50-plus year history of the industry

² 47 U.S.C. Sec. 534; *see also* 1992 Cable Act, Sec. 2 (preamble section stating the reasons why statutory must carry necessary to preserve free over-the-air television).

has the basic premise of signal availability been more at risk than it is during this critical transition period. Rather than turning its back on the 1992 Cable Act, the Commission should use the tools provided by Congress to ensure that the new DTV signals are available to the largest numbers of people possible, increasing the probability that a "critical mass" of receivers/set-top boxes will be purchased to make the system viable.³

None of the other proposals set forth by the Commission will foster implementation of DTV, and most ensure its destruction. Each can be dispensed with quickly:

1. **System Upgrade Proposal.**⁴ The Commission here proposes that stations would gain carriage only if a cable system has more than a set number of channels. CGT does not understand the proposed benefit of this proposal. Since the statute already limits the total number of channels which must be dedicated to television stations (maximum of one-third capacity), why further limit the systems to which must carry would apply? More important, pegging must carry obligations to a set number of channels will no doubt stifle the cable industry from engaging in re-builds of their systems. Why increase capacity from 110 channels up to 120

³ It is, after all, the failure of the market to purchase AM stereo equipment that eventually doomed that technology. Although the problem of incompatible formats is not present in DTV, the fact is that without a public willing to purchase receivers, no transmission method can be successful.

⁴ *NPRM*, par. 44.

channels if eight of those 10 new channels would have to be dedicated to over-the-air DTV signals? The burden of cable systems is already limited under the statute to one-third of capacity, and should remain there.

2. Phase-In Proposal.⁵ Next, the Commission proposes to take some of the sting out by limiting the number of signals which must be added to something like three to five per year. The problem here is that cable systems would once again be granted the power to “pick winners” among television stations, the same power that Congress explicitly found had been abused during the time when there were no must carry rules in place.⁶ The additional burden between adding five signals to adding all stations in a market will not increase significantly this burden, especially given the one-third cap of the statute. For all the reasons stated by Congress, the Commission should avoid giving cable systems the chance to favor some broadcasters in a market over others.

3. Either-Or Proposal.⁷ Under this proposal, TV stations choose to have either their analog or digital channels carried, but not both until 2005. It doesn’t take a rocket scientist to figure out what would happen under this scenario. Given the choice of having a signal carried that on day one will be able to be received by 100

⁵ *NPRM*, par. 46.

⁶ *See NPRM*, par. 5.

percent of the market, versus a signal that can be received by one or two percent of the market, no station in its right mind will opt to have only its DTV signal carried on cable. This proposal spells instant death for DTV.

4. Equipment Penetration Proposal.⁸ Talk about your billion dollar chicken and egg problem! If the Commission adopts its proposal to not trigger must carry until some minimum threshold of viewers have equipment, then at the least it will have stunted market penetration for several years. Equally probable is a scenario in which the lack of must carry suppresses the adoption curve of consumers into something like that for VCRs or color television, wherein it took decades for a critical mass of consumers to buy enough to force the rest of the market to follow suit.

5. Deferral Proposal.⁹ It is unfathomable to CGT how the Commission can even think of “punting” on this issue until May 1, 2002. Major market stations do not have the option to push back their decision points, and even stations such as WKJG located in medium-sized markets have already invested substantially in gearing up for DTV transmission. To now say that the Commission will take a “wait and see” approach can have only one effect – consumers will take that same “wait and see” attitude to DTV

⁷ NPRM, par. 47.

⁸ NPRM, par. 48.

receiver purchases. This is no time for the Commission suddenly to become timid, not after it has already committed the industry into a full sprint into the world of digital, with the full intent on blowing up the bridge of analog transmission in 2006.

6. **No Must Carry.**¹⁰ Finally, the Commission asks whether it should just not apply must carry to DTV at all. The answer to this is simple -- No must carry equals no viable DTV. This option dooms the entire scheme from the start.

From the above analysis it is clear that if the objective of introducing DTV as rapidly as possible is still the prime mover in this proceeding, then only quick and full carriage on cable systems will advance that objective. Any other proposal undercuts to one degree or another the goals set forth in the various Reports and Orders in this proceeding. The Commission is imposing burdens on all aspects of the television market, and cable should not be heard to cry that they should be exempt from some of these burdens.

D. Signal Quality Issues Are Critical In This Proceeding

The Commission touches on some significant issues when it asks about signal quality issues. When the Commission may not fully appreciate, however, is that DTV, at its core, ***is about signal quality***. By this we mean that the difference between an analog and digital

⁹ NPRM, par. 49.

¹⁰ NPRM, par. 50.

television transmission of “Friends,” at least for the next few years, is only an issue of signal quality. Thus, the term “signal quality” must encompass a number of sub-issues which the Commission must be cognizant of as it proceeds.

1. Signal Quality Includes Format

The first signal quality issue which must be addressed in the context of cable carriage is that of format, and format changes.¹¹ CGT understands that the transmission protocol of cable and TV differ.¹² What must **not** be allowed to happen, however, is that as a cable system modifies the transmission protocol, it does so without modifying the format of the underlying signal. For example, CGT contends that a change from its adopted 1080i format to any of the other formats (e.g., 720p, 480i) would constitute a diminution in signal quality. If WKJG broadcasts in “HDTV”, then cable subscribers should receive that signal at 1080i, not some other format which cable chooses. The Commission gave **broadcasters** the choice of formats to adopt, based on their assessments of what is in the public interest, and what would best serve their viewers. Cable systems should not have the ability to change this format just because doing so might make the transmission easier on the system.

¹¹ *NPRM*, par. 67.

¹² *See, NPRM*, par. 19-22 (8 VSB vs. 64 and 265 QAM).

2. Signal Quality Standards Must Be Clear

Second, signal quality standards themselves must be clear, especially as they relate to whether a television station is delivering the necessary signal strength to entitle it to carriage.¹³ One of the true weak links in the current must carry regime for analog carriage is the ability of cable systems to “manufacture” poor signal readings in order to avoid their carriage obligations. Nearly every conceivable trick as been tried in cases where cable systems wish to avoid carriage, from using coat hangers as antennas, to placing antennas at ground level, to introducing hundreds of feet of excess cable between the antenna to the measuring device, to pointing the antenna the wrong way – all have been used to create what appear to be weak signal readings. The Commission must make its testing criteria crystal clear, and must be willing to sanction cable systems who play those games to either avoid carriage, or delay carriage while the Commission has to deal with frivolous claims of inadequate signal levels.

The signal quality issue also must be addressed from a real world standard. The current debate involving the Satellite Home Viewer Act (SHVA) is bringing this into sharp focus. The current definition of Grade B contour is based on the calculations that assume that 50 percent of the people on the circle can receive the signal 50 percent of the time. Many in the DBS business want to take this real-world approach and

stuff it back into the laboratory by claiming that a television signal really is available only where 100 percent of the people can receive it 100 percent of the time.

If a similar standard is adopted for DTV, then no cable system will be required to carry any television signals, because, inevitably, there will be momentary drop out of signal due to a variety of factors. The Commission must remain rational about signal quality, and keep the public interest in receiving local programming paramount.

E. Cable Should Carry All Of the DTV Signal

The NPRM asks the question of *what* must the cable system carry under the statute.¹⁴ The statute talks of the “primary video,” plus audio and line 21 closed captioning.¹⁵ Unfortunately, the term “primary video” really is a term with relevance only in an analog world. For in a digital world, what will be transmitted are digital packets, some containing video information, and some containing other data. Which of those packets contains what can be called “primary video” is impossible to discern “on the fly” (as the packets are being transmitted).¹⁶ Those data packets, for example, might include text which is to be overlayed on the video, or behind the video, which a viewer can bring up to view. For

¹³ NPRM, par. 68.

¹⁴ NPRM, par. 71.

¹⁵ 47 U.S.C. Sec. 535(g)(1).

¹⁶ Proposed transmission standards merely label the packets as “video” “data” and “aural.” There is no distinction made in the transmission protocols between “data” that is associated with the “video” or “data” which is unrelated to the video.

example, in the broadcast of a sporting event, there may be several layers of video (e.g., moving pictures) and data, all related to the game. The Commission should not now arbitrarily conclude that only the moving picture portion of the data transmission is what Congress meant by "primary video." Instead, the Commission should require that cable system pass all the data packet associated with that digital transmission. To do otherwise would deprive viewers of the opportunity to enjoy one of the true advantages of a digital world, where information can be accessed in a variety of forms. In a world where consumers are already comfortable with this multidimensional multimedia-type of presentation via the Internet, it would constitute a major step backwards for the Commission to conclude that DTV transmissions only consist of "video" plus "sound." For DTV to be success, it must be much more than that, and cable should be required to carry all of these data packets.

F. The Commission Should Ensure That No New "Siberias" Are Created

At Paragraph 78, the FCC touches on the issue of channel position in this new digital world. Although it may be too early to fully understand how cable systems will place and number their digital tiers, some basic concepts must carry forward from the analog must carry world. First, the digital tier containing the DTV must carry signals must be available to all subscribers. To make it available only to subscribers with special tuners, or to bundle the signals in with some pay-per-view

tier totally defeats the purposes of must carry as envisioned by Congress. Further, the Commission should not allow cable systems to arbitrarily place the digital must carry stations sandwiched between a dozen blank or special event channels where they are difficult to find. If the Commission wishes DTV to gain public acceptance as soon as possible, then cable systems must be required to place those signals where subscribers can find them.

G. The Commission Should Adopt Consumer-Friendly Notification Requirements

The switch from analog to digital is not going to be easy on many subscribers. Many will need significant help in understanding the transition, and what hardware they will need to maximize the new system. In the past, the FCC has adopted consumer notification and other such rules which require cable systems to help their subscribers understand new regulations, and otherwise provide a minimal level of customer service.¹⁷ CGT urges the Commission to adopt similar rules for DTV must carry. CGT is confident that television stations and the consumer electronic industry will do their part to inform the public, but cable systems similarly should be required to participate in this education process, again to serve the underlying primary purpose of making the transition to digital as soon as possible.

¹⁷ See, e.g., 47 C.F.R. Sec. 76.309(c)(3)(i)(A) (notifications which must be provided new subscribers); 47 C.F.R. Sec. 76.309(c)(3)(i)(B) (30 day notice requirement for changes in rates, programming services or channel position); 47 C.F.R. Sec. 76.309(c)(3)(ii) (requirement to provide clear and concise bills to subscribers).

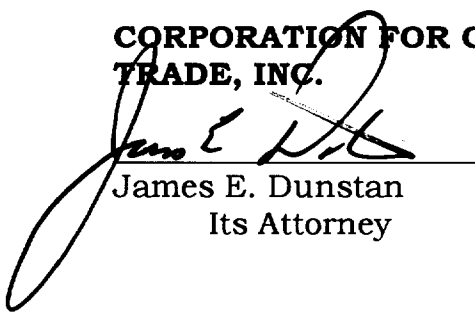
III. CONCLUSION

This country stands at a critical crossroads as the analog world of television comes to an end, and the new world of digital beckons. Unfortunately, as has been the case in the past, the cable industry owns the toll booth at that crossroads. The Commission must make sure that there is free passage through that toll booth, so that consumers get to enjoy all the benefits of the new digital world. Allow cable to slam the turnstiles closed, and the door to the digital world could be closed for many years to come.

WHEREFORE, the above-premises considered, CGT requests that the Commission adopt measure to ensure that consumers receive all DTV signals as soon as possible, as detailed herein.

Respectfully Submitted,

**CORPORATION FOR GENERAL
TRADE, INC.**



James E. Dunstan
Its Attorney

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October 13, 1998

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing " Comments of Corporation for General Trade, Inc." has been delivered by hand to the following on this 13th day of October, 1998.

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Chairman
Federal Communications Commission
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Washington, DC 20554

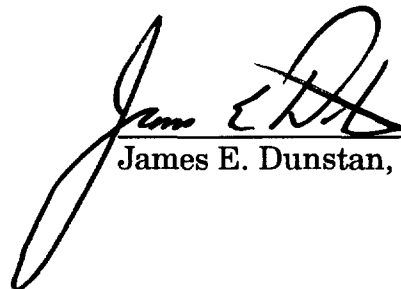
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